

**NEBRASKA BOARD OF PHARMACY**  
**MEETING MINUTES**  
**September 11, 2006**

**ROLL CALL**

C. Curtis Barr, R.P. Chair, called the meeting to order at 10:28 a.m. at the Double Tree Guest Suites, 7270 Cedar Street, 6<sup>th</sup> Floor Meeting, Room, in Omaha, NE. Copies of the agenda were sent to Board members and other interested parties prior to the meeting. The following Board members answered roll call:

C. Curtis Barr, R.P., Chairperson  
Kevin Borchert, R.P., Vice-Chairperson  
Richard Zarek, R.P.  
Roger Kaczmarek, R.P.

Absent: Linda Labenz, Secretary

A quorum was present and the meeting convened.

Also present from the Department were: Becky Wisell, Section Administrator; Vonda Apking, Credentialing Coordinator; Cecilia Curtis-Beard, Credentialing Specialist; Pharmacy Inspectors: Tony Kopf, R.P., Ronald Klein, R.P., and Mike Swanda, R.P.; and Lisa Anderson, Assistant Attorney General.

**REVIEW OF AGENDA**

Adoption of Consent Agenda

Zarek moved, seconded by Kaczmarek, to approve the consent agenda. Voting aye: Barr, Borchert, Kaczmarek, and Zarek. Absent: Labenz. Voting nay: None. Motion carried.

Adoption of Agenda

Zarek moved, seconded by Kaczmarek, to approve the agenda with the Chairperson having the ability to rearrange as needed. Voting aye: Barr, Borchert, Kaczmarek, and Zarek. Absent: Labenz. Voting nay: None. Motion carried.

**INVESTIGATIONAL REPORTS, DISCIPLINARY REPORTS, CONTROLLED SUBSTANCES AUDIT REPORTS, AND QUARTERLY REPORT FROM INVESTIGATIONS– CLOSED SESSION**

Borchert moved, seconded by Zarek, to close the session at 10:30 a.m. to receive disciplinary reports, controlled substances audit reports, and review a reinstatement application of pharmacist after discipline. Voting aye: Barr, Borchert, Kaczmarek, and Zarek. Absent: Labenz. Voting nay: None. Motion carried.

Zarek moved, seconded by Kaczmarek to reopen the session at 11:36a.m. Voting aye: Barr, Borchert, Kaczmarek, and Zarek. Absent: Labenz. Voting nay: None. Motion carried.

**DISCIPLINARY/NON-DISCIPLINARY INFORMATION – ACTIONS TAKEN/PENDING –CONSENT – OPEN SESSION****(6) Disciplinary/Non-Disciplinary Information – Actions Taken/Pending – Consent****Disciplinary/Non-Disciplinary Information – Actions Taken/Pending**

<b>Name</b>	<b>Actions Taken and/or Pending</b>	<b>Alleged Violation</b>
Asher, Richard	Petition for Disciplinary Action 2/27/06  Order on Agreed Settlement 8/21/06 • 3 years' probation • \$2,500 civil penalty	Failure to maintain accurate records of receipt and disposition of all controlled substances accepted into inventory.
Crosier, Lea Anne	Petition to Revoke Probation 8/24/06  Hearing 9/25/06 at 1:30 p.m.	Failure to appear for body fluid/chemical testing, use of prescription drugs (tramadol and carisoprodol) without a valid prescription, removed two triameterene from stock inventory and returned two triameterene from her personal prescription back into the stock bottle.
Hereilyn, Chad	Petition for Disciplinary Action 07/06/06  Order on Agreed Settlement 07/25/06 • Censure • \$500 Civil Penalty	Failure to report disciplinary action on Missouri license within 30 days.
Holloway, Randall	Petition for Disciplinary Action 05/22/06  Order Accepting Agreed Settlement 08/04/06 • 5 years' probation with various terms and conditions	Overfilling prescriptions for controlled substance cough medication for his wife, refilling prescriptions too soon and refilling prescriptions too often; dispensing promethazine with codeine to his wife without prescriber authorization; dispensing promethazine with codeine without a prescription
Irish, Kevin	Petition for Disciplinary Action 3/31/06  Motion to Re-Open Case 7/11/06  Continued – no new date has been set	Four convictions of Driving Under the Influence; alcohol dependence; failure to report misdemeanor conviction within 30 days.
Sunderman, Vicki	• Notice of Request for Administrative Hearing	Request to terminate probation prior to May 1, 2007 date.
Walgreens Healthcare Plus (Mail Service Pharmacy)	Refusal to renew 01/27/06  Order on Agreed Settlement 07/31/06 • \$2,500 fine • Adhere to all federal and state laws and regulations governing the practice of pharmacy	Not employing a Nebraska licensed pharmacist; past disciplinary action in another state.

Name	Actions Taken and/or Pending	Alleged Violation
Whittlesey, Gina	Petition for Disciplinary Action 06/16/06  Order of Agreed Settlement 07/25/06 • Censure • \$500 Civil Penalty • 5 years' probation	2005 disciplinary actions north Carolina and Louisiana; failure to report the disciplinary actions within 30 days.
Zenon, Terry	Petition for Disciplinary Action 06/16/06  Order Rejecting Agreed Settlement 07/06/06  Hearing 10/23/06 at 1:30 p.m.	Misdemeanor conviction for assault of a minor; failure to report misdemeanor conviction within 30 days.

#### **Non-Disciplinary Information – Actions Taken/Pending**

Name	Actions Taken and/or Pending	Alleged Violation
Feiring, Robert	Assurance of Compliance 6/12/06	Misdemeanor conviction for attempting to elude; failure to report misdemeanor conviction within 30 days.

**(7A) Pharmacist Intern Applications with Misdemeanor/Felony Convictions (1)**

**(7C) Mail Service Pharmacy with past Disciplinary Action (1)**

**(7D) Mail Service Pharmacy Renewal with Past Disciplinary Action (1)**

**(8) Pharmacy Technician Manuals (3)**

**(9) Pharmaceutical Care Agreements (2)**

#### **FINANCIAL REPORT**

##### **Budget Status Report**

Wisell explained the budget status report that was distributed to the Board members. The report shows the expenditures and revenues for the month of July.

##### **FY07 Budget Approval**

Wisell stated there are funds available to obtain laptops for the Board members for the purpose of having paperless meetings. This expenditure has been noted in the proposed FY07 budget. Also, since the Board members traveled to Canada for the District V meeting, travel expenses listed on the proposed FY07 budget are higher. Wisell also increased the postage expense in the FY07 proposed budget to cover the cost of distributing the new wholesale regulations once they are in effect. Kaczmarek moved, seconded by Zarek, to approve the FY07 budget. Voting aye: Barr, Borchert, Kaczmarek, and Zarek. Absent: Labenz. Voting nay: None. Motion carried.

#### **PRACTICE QUESTION**

The Board discussed a letter received from PrairieStone Pharmacy concerning multi-dosage packaging of prescription medications. Barr suggested that a letter be forwarded to the company stating the State of Nebraska Board of Pharmacy does not endorse products and that statutes and regulations have been enclosed for their review with highlights noting multi-dose packaging and prescription label requirements. **Action Item: Staff to write a letter to PrairieStone Pharmacy.**

## **RATIFY APPROVAL OF MINUTES**

July 27, 2006

Borcher mentioned a couple of typographical errors. Kaczmarek moved, seconded by Zarek, to ratify the approval minutes from July 27, 2006, including the corrections to the typographical errors. Voting aye: Barr, Borcher, Kaczmarek, and Zarek. Absent: Labenz. Voting nay: None. Motion carried.

## **2007 LEGISLATION**

Wisell explained that the pharmacy practice act changes will not include adding a new public member to the Board due to the fiscal impact such a change would have. Wisell mentioned that the bill drafter had some questions concerning the pharmacy practice act. One question concerned what the effective date should be used for the CFR. The Board decided that the effective date should be April 1, 2006. Another question concerned whether or not the Board was going to charge a licensing fee for a temporary educational permit. The Board decided that fee language should be included in draft. Wisell stated that Ms. Meeks is not accepting any more changes to the ULL.

Wisell introduced Joe Acierno. Mr. Acierno has joined the Department Legal staff.

Wisell thanked Barr for his assistance and those at Creighton who helped review this legislation. Wisell stated that the Department hopes that a Senator will introduce this bill during the upcoming legislative session.

## **QUARTERLY REPORT FROM THE LICENSEE ASSISTANCE PROGRAM (LAP)**

Wisell discussed LAP's 3<sup>rd</sup> Quarter Report with the Board. Wisell stated LAP's activities have increased. There has been a decrease in the number of pharmacists receiving their services.

Wisell informed the Board that LAP had an annual workshop in May. The workshop focused on relapse and abuse prevention.

## **COMMITTEE REPORTS**

### MPJE

Borcher and Kopf will attend the next MPJE Review meeting in Texas during January 2007. Barr informed the Board that NABP has hired a company to write the MPJE questions.

Charles Krobot, UNMC asked the Board whether K-type questions will still be included on the MPJE exam. The Board informed him that questions of this type are still being used. Klein explained that the purpose of the meeting is to review the entire bank of questions on the MPJE.

### Tri-Partite Committee

Nothing to report.

### Formulary Advisory Committee

Nothing to report.

## **HEARING ON PETITION FOR REINSTATEMENT – MILTON MUNSON (1:00 P.M.)**

Kaczmarek moved, seconded by Zarek, to close the session at 12:42 p.m., so that Roger Brink can discuss legal proceedings with the Board. Voting aye: Barr, Borcher, Kaczmarek, and Zarek. Absent: Labenz. Voting nay: None. Motion carried.

Borcher moved, seconded by Kaczmarek, to open the session at 12:59 p.m. Voting aye: Barr, Borcher, Kaczmarek, and Zarek. Absent: Labenz. Voting nay: None. Motion carried.

The Public Hearing was held at 1:17 p.m. on Milton Munson's Petition for Reinstatement of his license to practice pharmacy #8763. Milton Munson failed to appear and Lisa Anderson, Assistant Attorney General, represented the State.

Kaczmarek moved, seconded by Zarek, to close the session at 1:25 p.m., for deliberation. Voting aye: Barr, Borchert, Kaczmarek, Zarek. Voting nay: None. Absent: Labenz. Motion carried.

Borchert moved, seconded by Kaczmarek, to open the session at 1:29 p.m. Voting aye: Barr, Borchert, Kaczmarek, and Zarek. Absent: Labenz. Voting nay: None. Motion carried.

Zarek moved, seconded by Kaczmarek, to deny the petition for reinstatement by Mr. Munson. The denial is based on the facts set out in the Board's previous determination plus the non-appearance of Mr. Munson to counter these facts at his scheduled hearing before the Board. Voting aye: Barr, Borchert, Kaczmarek, Zarek. Voting nay: None. Absent: Labenz. Motion carried.

The Public Hearing was concluded at 1:30 p.m.

### **PRESCRIPTION DRUG MONITORING PROGRAM (PMP) GRANT**

Klein explained that every pharmacy would have to report all the controlled substance prescriptions to the State under a PMP program. The program will allow inspectors to identify people going from physician to physician and pharmacy to pharmacy obtaining multiple prescriptions for controlled substances. Some states monitor Schedule II controlled substances and some monitor all schedules of controlled substances. The PMP program should help deter doctor shopping and the abuse of controlled substances. Pharmacies could purchase software, but could also report manually. At some time pharmacies would be required to obtain the software.

Klein stated there are currently 21 states that have a PMP program established. Klein also discussed the \$50,000 planning grant available. Wisell explained the deadline to submit a proposal for legislation in 2007 has passed. Wisell stated that Nebraska is at the stage of making application for the planning grant. Klein added once Nebraska receives the planning grant, then Nebraska could apply for an implementation grant of up to \$350,000 but Nebraska would have to have a program to put into place before applying for this additional grant. Klein informed the Board that legislation would need to be introduced in the 2008 legislative session.

Klein informed the Board that once a program is established; Nebraska will eventually have to coordinate with the programs in Iowa and the east end of South Dakota. Klein added that when legislation is developed, the Board might want to consider requiring Nebraska Mail Service Pharmacies to report as well. **Action Item: Klein will finalize the PMP grant application for the Board's review.**

### **REGULATIONS DEVELOPMENT**

Eric Wachendorf, Vice President of Distribution Operations of McKesson, addressed the Board. Mr. Wachendorf requested that cooperative wholesalers be included in the definition of normal distribution chain. Wisell explained that the Board has the statutory authority to expand the definition of normal distribution chain.

Zarek moved, seconded Kaczmarek, to add two more ways to define normal distribution chain: 1) From a manufacturer or co-licensee to a wholesale drug distributor, to a pharmacy buying cooperative warehouse, to a pharmacy that is a member or member owner of such pharmacy buying cooperative warehouse, and then to a patient or a patient's agent and 2) From a manufacturer or co-licensee to a pharmacy buying cooperative warehouse, to pharmacy that is a member or member owner of such pharmacy buying cooperative warehouse, to a patient or a patient's agent. Voting aye: Barr, Borchert, Kaczmarek, and Zarek. Absent: Labenz. Voting nay: None. Motion carried.

Kaczmarek suggested adding a definition for pharmacy buying cooperative warehouse. The Board discussed that pharmacy buying cooperatives only sell to members or member owners. Barr read the Colorado Board of Pharmacies definition of pharmacy buying cooperative warehouse which stated "a permanent physical location that acts as a central warehouse for prescription drugs and from which sales of such drugs are made to an exclusive group of pharmacies that are members or member owners of the buying cooperative operating the warehouse and shall be licensed as a wholesaler". The Board agreed with the definition.

The Board discussed the draft language for inspections and the grounds for discipline.

Steven Wright, Board of Veterinary Medicine and Surgery and Elaine Lust, Creighton University addressed the Board. Ms. Lust summarized to the Board the Florida changes concerning veterinary drug wholesalers. Dr. Wright requested that the Board of Pharmacy look at providing a limited wholesaler license to veterinary wholesalers. Barr explained that this would be

statute change not a regulation change. The Board of Pharmacy will not be introducing statutory changes to the Wholesaler Act during this legislative session.

Zarek moved, seconded by Borchers, to set 172 NAC 131 Regulations Governing Wholesale Drug Distribution for hearing as amended. Voting aye: Barr, Borchers, Kaczmarek, and Zarek. Absent: Labenz. Voting nay: None. Motion carried.

Zarek discussed the letter from Duane Gangwish of Nebraska Cattlemen. Barr suggested that the Board of Veterinary Medicine and Surgery and Board of Pharmacy should have another Committee meeting to discuss veterinary pharmacy issues in detail. **Action Item: Staff to make recommended changes to the draft of Wholesale Drug Distribution regulations and set the draft regulations for public hearing.**

### **WALGREENS PRESENTATION – VISION SYSTEM – DAN LUCE**

Dan Luce, Corporate Manager of Pharmacy Affairs at Walgreens, addressed the Board. Mr. Luce explained that the purpose of the Vision System is to minimize the distractions of a pharmacist during the dispensing of prescriptions. This system has been approved in 29 countries including Puerto Rico.

Mr. Luce explained that the system allows prescriptions to be distributed to other Walgreens pharmacies that are designated to concentrate on one aspect of the dispensing process. The system allows pharmacies that are extremely busy to be helped by a pharmacy that is less busy. The system tracks every employee that works on any aspect of the dispensing process.

Kaczmarek reminded Mr. Luce that in the past when inspectors visited the Walgreen pharmacies, they had difficulties in obtaining the requested pharmacy records needed to complete an audit. Kaczmarek asked if the Vision System would make it easier for the inspectors to obtain the pharmacy records needed. Mr. Luce said this system will make the records readily available for the inspectors. Jeff Hines, Walgreens, stated in the past when an inspector requested pharmacy records, it would take longer than 24 hours to obtain the records. Mr. Luce stated it would take less time with this system in place.

Kopf asked whether the system software, would recognize all store numbers. Mr. Luce commented that the system software will recognize all store numbers. Anderson asked what happens if the system goes down. Mr. Luce explained there is a backup tape.

The Board requested that Walgreens notify them when this program is started and provide the Board with an update after 3-4 months of the system being in operation.

The Board members and staff introduced themselves to the students in attendance. Barr gave an overview of the Board's responsibilities and activities.

### **PHARMACIST ACCESS ISSUES MEETING**

Barr stated that Creighton University has researched the impact of Medicare D on patient pharmacy services in Nebraska. There have been 34 pharmacies that have closed. Barr introduced Kimberly Galt, Creighton University. Dr. Galt addressed the Board explaining the research conducted by Creighton University. Most of the closings were due to a decrease of cash flow. Dr. Galt explained that some pharmacies have borrowed up to \$100,000, if not more, to keep their doors open for their patients.

Zarek and Barr mentioned that telepharmacy would be a great benefit to the rural areas of Nebraska.

### **PATIENT SAFETY RFP**

Wisell informed the Board that only one RFP was received. The RFP was received from Kimberly Galt of Creighton University.

Dr. Galt gave an overview of her proposal. Zarek moved, seconded by Kaczmarek, to approve the proposal submitted by Creighton University. Voting aye: Barr, Borchers, Kaczmarek, and Zarek. Absent: Labenz. Voting nay: None. Motion carried.

Wisell explained even though the proposal has been approved for funding, work cannot begin until the contract for funds has been finalized. Wisell added the Board can decide how to disperse the funds over the next two years. **Action Item: Staff will work on the Patient Safety Grant contract and bring it back to the Board.**

## **APPLICATION REVIEW**

Borcher moved, seconded by Zarek, to reinstate the pharmacist license of Donald Fagan, on probation for five years with the following probationary terms and conditions:

- Abstain from the use of alcohol including, but not limited to, any over-the-counter medications and mouthwash containing alcohol unless prescribed for or administered to the licensee by a licensed physician or other authorized licensed practitioner for a diagnosed medical condition;
- Abstain from personal use or possession of controlled substances and all other prescription drugs unless prescribed for or administered to the licensee by an authorized licensed physician or authorized licensed practitioner for a diagnosed medical condition;
- Shall not have access to controlled substances for the first two years of the probationary period without the direct supervision of a licensed pharmacist;
- Verification from treating practitioner of all prescription medications;
- Report all prescription medications taken;
- Submit to random body fluid or chemical testing at his own expense at such time and places as the Department may direct;
- Comply with treatment recommendations;
- Advise Department of any mental health or chemical abuse/dependency treatment or counseling;
- Participate in a minimum of 2 NA, AA, or other support group meetings per week unless more are recommended by the licensee treatment provider;
- Provide written authorization to Department for all treatment/counseling reports;
- Maintain a NA, AA, or other support group sponsor;
- Provide notification of his disciplinary actions to all employers;
- Quarterly employer report;
- Submit to on-site, random controlled substances audits at his own expense of the pharmacy or pharmacies where the licensee is employed with at no more than 2 additional audits per year above those audits currently mandated;
- Provide notice of disciplinary actions to other states where he is licensed or any subsequent out-of-state licensure;
- Provide written notice to Department of employment changes within 7 days;
- Provide written notice to Department of address or phone change within 7 days;
- Comply with all reports, notices or other documentation from the Department;
- Obey all state and federal laws, rules and regulations regarding the practice of pharmacy and report violations to Department within seven days;
- Pay any costs associated with ensuring compliance including, but not limited to, random fluid/chemical testing and controlled substance audits;
- Appear at any meetings of the Board when requested;
- Shall not be a Pharmacist-in-Charge;
- Shall not supervise pharmacist interns or students; and
- Other standard probationary language.

The basis for this probationary license is the recent diagnosis of opioid dependence and recent disciplinary action. Voting aye: Barr, Borcher, Kaczmarek, and Zarek. Absent: Labenz. Voting nay: None. Motion carried.

The Board highly recommends that the petitioner attends the program offered by University of Utah School of Alcoholism and other Drug Dependencies.

## **NABP ISSUES**

Apking explained that the article deadline for the November newsletter is October 1<sup>st</sup>. Kaczmarek volunteered to write an article on repackaging for long-term care facilities. **Action item: Kaczmarek to write article and forward to staff before the October 1, 2006, deadline.**

## **ACTION ITEMS**

The Board discussed the DEA ruling on fill after dates. Borcher stated prescribers could write for up to a 90-day supply for Schedule II's. Borcher volunteered to write a letter stating that the Board supports the time frame of 90-days, but would

prefer a 6-month time frame. **Action Item:** Borchner to write letter to DEA in support the time frame of 90-days, but that Nebraska Board of Pharmacy would prefer a 6-month time frame.

### **CORRESPONDENCE AND GENERAL INFORMATION**

Next Board meeting is schedule on November 6<sup>th</sup> at the Staybridge. Barr stated Borchner received the honor of Health-System Pharmacist of the Year award. The Board discussed that Barr and Labenz's last meeting will be in November.

Zarek requested that Plan B be an item of discussion at the next Board meeting.

The Board encouraged the students to become active in the profession and think about being Board of Pharmacy members.

### **ADJOURNMENT**

Zarek moved, seconded by Kaczmarek, to adjourn the meeting at 4:27 p.m. Voting aye: Barr, Borchner, Kaczmarek, and Zarek. Absent: Labenz. Voting nay: None. Motion carried.

Respectfully submitted,

Kevin Borchner, Vice-Chairperson  
Board of Pharmacy